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 14 *Devicewear, LLC and Robert Dodge*

15 UNITED STATES DISTRICT COURT  
 16 CENTRAL DISTRICT OF CALIFORNIA  
 17 SOUTHERN DIVISION

18 UZBL, LLC, a California Limited  
 Liability Company,

19 Plaintiff,

20 v.

21 DEVICWEAR, LLC, a Delaware  
 22 Limited Liability Company; ROBERT  
 DODGE, an individual; DOES 1 through  
 23 10, inclusive,

24 Defendants.

CASE NO.: 8:17-cv-1978-JVS-KES

Hon. James V. Selna

**[PROPOSED] STIPULATED  
 PROTECTIVE ORDER**

1 **I. PURPOSES AND LIMITATIONS**

2 This action is likely to involve trade secret, valuable research, and commercial,  
3 financial, technical and/or proprietary information for which special protection from  
4 public disclosure and from use for any purpose other than prosecution of this action is  
5 warranted. Such confidential and proprietary materials and information consist of,  
6 among other things, confidential business or financial information, information  
7 regarding confidential business practices, or other confidential research, development,  
8 or commercial information, information otherwise generally unavailable to the public,  
9 or which may be privileged or otherwise protected from disclosure under state or  
10 federal statutes, court rules, case decisions, or common law. Accordingly, to expedite  
11 the flow of information, to facilitate the prompt resolution of disputes over  
12 confidentiality of discovery materials, to adequately protect information the parties  
13 are entitled to keep confidential, to ensure that the parties are permitted reasonable  
14 necessary uses of such material in preparation for and in the conduct of trial, to  
15 address their handling at the end of the litigation, and to serve the ends of justice,  
16 Plaintiff UZBL, LLC (“UZBL”) and Defendants Devicewear, LLC (“Devicewear”)  
17 and Robert Dodge (“Dodge”) (collectively, “Defendants”) (individually “party” and  
18 collectively “parties”) hereby stipulate to and petition the court to enter the following  
19 Protective Order.

20 The parties acknowledge that this Order does not confer blanket protections on  
21 all disclosures or responses to discovery and that the protection it affords from public  
22 disclosure and use extends only to the limited information or items that are entitled to  
23 confidential treatment under the applicable legal principles. The parties further  
24 acknowledge, as set forth in Section 13.4 below, that this Protective Order does not  
25 entitle them to file confidential information under seal; Local Rule 79-5 sets forth the  
26 procedures that must be followed and the standards that will be applied when a Party  
27 seeks permission from the court to file material under seal.

28

1 **II. DEFINITIONS**

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation  
3 of information or items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information designated as  
5 “CONFIDENTIAL” (regardless of how it is generated, stored, or maintained) shall  
6 mean and include any document, thing, deposition testimony, interrogatory answers,  
7 responses to requests for admissions and requests for production, disclosures pursuant  
8 to Federal Rule of Civil Procedure 26, or other information provided in discovery,  
9 settlement communications, negotiations, or in any other manner in this action, which  
10 contains information that is non-public, confidential, and/or proprietary, whether  
11 personal, such as information regarding employees’ personal and employment  
12 information including without limitation social security numbers and personal bank  
13 account numbers, or business related, such as information that constitutes, reflects, or  
14 concerns trade secrets, know-how or proprietary data, business, financial, or  
15 commercial information, the disclosure of which is likely to cause harm to the  
16 competitive position of the party making the confidentiality designation, including for  
17 example non-public customer lists, past product development, past business/strategic  
18 plans, past sales projections, past marketing plans, and non-public contracts. Certain  
19 limited types of “CONFIDENTIAL” information may be further designated, as  
20 defined and detailed below, as “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES  
21 ONLY.”

22 2.3 Counsel (without qualifier): Outside Counsel of Record.

23 2.4 Designating Party: a Party or Non-Party that designates information or  
24 items that it produces in disclosures or in responses to discovery as  
25 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
26 ONLY.”

27 2.5 Disclosure or Discovery Material: all items or information, regardless of  
28 the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced or  
2 generated in disclosures or responses to discovery in this matter.

3       2.6 Expert: a person with specialized knowledge or experience in a matter  
4 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve  
5 as an expert witness or as a consultant in this action, (2) is not a past or current  
6 employee of a Party or of a Party's competitor, and (3) at the time of retention, is not  
7 anticipated to become an employee of a Party or of a Party's competitor.

8       2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
9 Information or Items: extremely sensitive “Confidential Information or Items,”  
10 disclosure of which to another Party or Non-Party would create a substantial risk of  
11 serious harm that could not be avoided by less restrictive means. This type of  
12 information and items includes, but is not limited to, pending patent applications,  
13 products currently in development and not yet commercially released, technical  
14 specifications, documents regarding the design or development of the accused product  
15 or system, current business/strategic plans, future sales/financial projections, future  
16 marketing plans, detailed sales and financial data, or other highly sensitive or  
17 proprietary competitive or financial information.

18       2.8 Non-Party: any natural person, partnership, corporation, association, or  
19 other legal entity not named as a Party to this action.

20       2.9 Outside Counsel of Record: attorneys who are not employees of a party  
21 to this action but are retained to represent or advise a party to this action and have  
22 appeared in this action on behalf of that party or are affiliated with a law firm which  
23 has appeared on behalf of that party.

24       2.10 Party: any party to this action, including all of its officers, directors,  
25 employees, consultants, retained experts, and Outside Counsel of Record (and their  
26 support staffs).

27       2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
28 Discovery Material in this action.

1           2.12 Professional Vendors: persons or entities that provide litigation support  
2 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
3 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
4 and their employees and subcontractors.

5           2.13 Protected Material: any Disclosure or Discovery Material that is  
6 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
7 EYES ONLY.”

8           2.14 Receiving Party: a Party that receives Disclosure or Discovery Material  
9 from a Producing Party.

10 **III. SCOPE**

11           The protections conferred by this Protective Order cover not only Protected  
12 Material (as defined above), but also (1) any information copied or extracted from  
13 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
14 Material; and (3) any testimony, conversations, or presentations by Parties or their  
15 Counsel that might reveal Protected Material. However, the protections conferred by  
16 this Protective Order do not cover the following information: (a) any information that  
17 is in the public domain at the time of disclosure to a Receiving Party or becomes part  
18 of the public domain after its disclosure to a Receiving Party as a result of publication  
19 not involving a violation of this Order, including becoming part of the public record  
20 through trial or otherwise; and (b) any information known to the Receiving Party  
21 prior to the disclosure or obtained by the Receiving Party after the disclosure from a  
22 source who obtained the information lawfully and under no obligation of  
23 confidentiality to the Designating Party. Any use of Protected Material at trial shall be  
24 governed by a separate agreement or order.

25 **IV. DURATION**

26           Even after final disposition of this litigation and the applicability of the  
27 requirements of Section 14 (FINAL DISPOSITION), the confidentiality obligations  
28 imposed by this Order shall remain in effect until a Designating Party agrees

1 otherwise in writing, a court order otherwise directs, or the confidentiality obligations  
2 expire pursuant to this Order. Final disposition shall be deemed to be the later of (1)  
3 dismissal of all claims and defenses in this action, with or without prejudice; and (2)  
4 final judgment herein after the completion and exhaustion of all appeals, rehearings,  
5 remands, trials, or reviews of this action, including the time limits for filing any  
6 motions or applications for extension of time pursuant to applicable law.

7 **V. DESIGNATING PROTECTED MATERIAL**

8 5.1 Exercise of Restraint and Care in Designating Material for Protection.

9 Each Party or Non-Party that designates information or items for protection  
10 under this Order must take care to limit any such designation to specific material that  
11 qualifies under the appropriate standards.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations  
13 that are shown to be clearly unjustified or that have been made for an improper  
14 purpose (*e.g.*, to unnecessarily encumber or retard the case development process or to  
15 impose unnecessary expenses and burdens on other parties) expose the Designating  
16 Party to sanctions.

17 If it comes to a Designating Party's attention that information or items that it  
18 designated for protection do not qualify for protection at all or do not qualify for the  
19 level of protection initially asserted, that Designating Party must promptly notify all  
20 other Parties that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in  
22 this Order (*see, e.g.*, second paragraph of Section 5.2(a) below), or as otherwise  
23 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
24 under this Order must be clearly so designated before the material is disclosed or  
25 produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (*e.g.*, paper or electronic documents,  
28 but excluding transcripts of depositions or other pretrial or trial proceedings), that the

1 Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY  
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains  
3 Protected Material.

4 A Party or Non-Party that makes original documents or materials available for  
5 inspection need not designate them for protection until after the inspecting Party has  
6 indicated which material it would like copied and produced. During the inspection  
7 and before the designation, all of the material made available for inspection shall be  
8 deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the  
9 inspecting Party has identified the documents it wants copied and produced, the  
10 Producing Party must determine which documents qualify for protection under this  
11 Order. Then, before producing the specified documents, the Producing Party must  
12 affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
13 ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material.

14 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
15 that the Designating Party identify on the record, before the close of the deposition,  
16 hearing, or other proceeding, all protected testimony and specify the level of  
17 protection being asserted. When it is impractical to identify separately each portion of  
18 testimony that is entitled to protection and it appears that substantial portions of the  
19 testimony may qualify for protection, the Designating Party may invoke on the record  
20 (before the deposition, hearing, or other proceeding is concluded) a right to have up to  
21 21 days to identify the specific portions of the testimony as to which protection is  
22 sought and to specify the level of protection being asserted. Only those portions of the  
23 testimony that are appropriately designated for protection within the 21 days shall be  
24 covered by the provisions of this Protective Order. Alternatively, a Designating Party  
25 may specify, at the deposition or up to 21 days afterwards if that period is properly  
26 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or  
27 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”

28 Parties shall give the other parties notice if they reasonably expect a deposition,

1 hearing, or other proceeding to include Protected Material so that the other parties can  
2 ensure that only authorized individuals who have signed the “Acknowledgment and  
3 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a  
4 document as an exhibit at a deposition shall not in any way affect the document’s  
5 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
6 ATTORNEYS’ EYES ONLY.”

7 Transcripts containing Protected Material shall have an obvious legend on the  
8 title page that the transcript contains Protected Material, and the title page shall be  
9 followed by a list of all pages (including line numbers as appropriate) that have been  
10 designated as Protected Material and the level of protection being asserted by the  
11 Designating Party. The Designating Party shall inform the court reporter of these  
12 requirements. Any transcript that is prepared before the expiration of a 21-day period  
13 for designation shall be treated during that period as if it had been designated  
14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
15 otherwise agreed. After the expiration of that period, the transcript shall be treated  
16 only as actually designated.

17 (c) for information produced in some form other than documentary and for any  
18 other tangible items, that the Producing Party affix in a prominent place on the  
19 exterior of the container or containers in which the information or item is stored the  
20 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
21 ONLY.”

22 5.3 Inadvertent Failures to Designate. If timely corrected following the  
23 Designating Party’s discovery of an inadvertent failure to designate, an inadvertent  
24 failure to designate qualified information or items does not, standing alone, waive the  
25 Designating Party’s right to secure protection under this Order for such material.  
26 Upon timely correction of a designation, the Receiving Party must make reasonable  
27 efforts to assure that the material is treated in accordance with the provisions of this  
28 Order.



1 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
3 designation of confidentiality at any time. Unless a prompt challenge to a Designating  
4 Party’s confidentiality designation is necessary to avoid foreseeable, substantial  
5 unfairness, unnecessary economic burdens, or a significant disruption or delay of the  
6 litigation, a Party does not waive its right to challenge a confidentiality designation by  
7 electing not to mount a challenge promptly after the original designation is disclosed.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
9 resolution process by providing written notice of each designation it is challenging  
10 and describing the basis for each challenge. To avoid ambiguity as to whether a  
11 challenge has been made, the written notice must recite that the challenge to  
12 confidentiality is being made in accordance with this specific paragraph of the  
13 Protective Order. The parties shall attempt to resolve each challenge in good faith and  
14 must begin the process by conferring directly (in voice to voice dialogue; other forms  
15 of communication are not sufficient) within 10 days of the date of service of notice. In  
16 conferring, the Challenging Party must explain the basis for its belief that the  
17 confidentiality designation was not proper and must give the Designating Party an  
18 opportunity to review the designated material, to reconsider the circumstances, and, if  
19 no change in designation is offered, to explain the basis for the chosen designation. A  
20 Challenging Party may proceed to the next stage of the challenge process only if it  
21 has engaged in this meet and confer process first or establishes that the Designating  
22 Party is unwilling to participate in the meet and confer process in a timely manner.  
23 Nothing in this Order shall be construed as releasing a Party from its obligation to  
24 resolve discovery disputes, including a dispute over a confidentiality designation,  
25 pursuant to Central District of California Local Rule 37-1.

26 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without  
27 court intervention, the Challenging Party shall file and serve a motion to challenge the  
28 confidentiality designation under Civil Local Rule 37-2 (and in compliance with Civil

1 Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or  
2 within 14 days of the parties agreeing that the meet and confer process will not  
3 resolve their dispute, whichever is later. Each such motion must be accompanied by a  
4 competent declaration affirming that the movant has complied with the meet and  
5 confer requirements imposed in the preceding paragraph.

6 The burden of persuasion in any such challenge proceeding shall be on the  
7 Designating Party. Frivolous challenges and those made for an improper purpose  
8 (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may  
9 expose the Challenging Party to sanctions. All parties shall continue to afford the  
10 material in question the level of protection to which it is entitled under the Producing  
11 Party’s designation until the court rules on the challenge.

12 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
14 disclosed or produced by another Party or by a Non-Party in connection with this case  
15 only for prosecuting, defending, or attempting to settle this litigation, unless otherwise  
16 permitted by this Protective Order. Such Protected Material may be disclosed only to  
17 the categories of persons and under the conditions described in this Order. When the  
18 litigation has been terminated, a Receiving Party must comply with the provisions of  
19 Section 14 below (FINAL DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a  
21 location and in a secure manner that ensures that access is limited to the persons  
22 authorized under this Order.

23 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
24 otherwise ordered by the court or permitted in writing by the Designating Party, a  
25 Receiving Party may disclose any information or item designated  
26 “CONFIDENTIAL” only to:

27 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
28 employees of said Outside Counsel of Record to whom it is reasonably necessary;

1 (b) the officers, directors, and employees of the Receiving Party to whom  
2 disclosure is reasonably necessary for this litigation and who have signed the  
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (c) Experts (as defined in this Order) of the Receiving Party to whom  
5 disclosure is reasonably necessary for this litigation and who have signed the  
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (d) the court and its personnel;

8 (e) court reporters and their staff, professional jury or trial consultants, and  
9 Professional Vendors to whom disclosure is reasonably necessary for this litigation  
10 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
11 A);

12 (f) during their depositions, witnesses in the action to whom disclosure is  
13 reasonably necessary and who have signed the “Acknowledgment and Agreement to  
14 Be Bound” (Exhibit A), **unless otherwise agreed by the Designating Party or**  
15 **ordered by the court.** Pages of transcribed deposition testimony or exhibits to  
16 depositions that reveal Protected Material must be separately bound by the court  
17 reporter and may not be disclosed to anyone except as permitted under this Protective  
18 Order.

19 (g) the author or recipient of a document containing the information or a  
20 custodian or other person who otherwise possessed or knew the information.

21 7.3 **Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES**  
22 **ONLY” Information or Items.** Unless otherwise ordered by the court or permitted in  
23 writing by the Designating Party, a Receiving Party may disclose any information or  
24 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only  
25 to:

26 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
27 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
28 disclose the information for this litigation;

1 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
2 necessary for this litigation, (2) who have signed the “Acknowledgment and  
3 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in  
4 paragraph 7.4(a)(2), below, have been followed;

5 (c) the Court and its personnel;

6 (d) court reporters and their staff, professional jury or trial consultants, and  
7 Professional Vendors to whom disclosure is reasonably necessary for this litigation  
8 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
9 A); and

10 (e) the author or recipient of a document containing the information or a  
11 custodian or other person who otherwise possessed or knew the information.

12 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

14 (a) Unless otherwise ordered by the court or agreed to in writing by the  
15 Designating Party, a Party that seeks to disclose to an Expert (as defined in this  
16 Order) any information or item that has been designated “HIGHLY CONFIDENTIAL  
17 – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a  
18 written request to the Designating Party that (1) identifies the general categories of  
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the  
20 Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name  
21 of the Expert and the city and state of his or her primary residence, (3) attaches a copy  
22 of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)  
23 identifies each person or entity from whom the Expert has received compensation or  
24 funding for work in his or her areas of expertise or to whom the expert has provided  
25 professional services, including in connection with a litigation, at any time during the  
26 preceding five years,<sup>1</sup> and (6) identifies (by name and number of the case, filing date,

27 \_\_\_\_\_  
28 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality  
obligation to a third-party, then the Expert should provide whatever information the

1 and location of court) any litigation in connection with which the Expert has offered  
2 expert testimony, including through a declaration, report, or testimony at a deposition  
3 or trial, during the preceding five years.

4 (b) A Party that makes a request and provides the information specified in the  
5 preceding respective paragraphs may disclose the subject Protected Material to the  
6 identified Expert unless, within seven (7) calendar days of delivering the request, the  
7 Party receives a written objection from the Designating Party. Any such objection  
8 must set forth in detail the grounds on which it is based.

9 (c) A Party that receives a timely written objection must meet and confer with  
10 the Designating Party (through direct voice to voice dialogue) to try to resolve the  
11 matter by agreement within seven (7) calendar days of the written objection. If no  
12 agreement is reached, the Party seeking to make the disclosure to the Expert may file  
13 a motion as provided in Civil Local Rule 37-2 (and in compliance with Civil Local  
14 Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion  
15 must describe the circumstances with specificity, set forth in detail the reasons why  
16 disclosure to the Expert is reasonably necessary, assess the risk of harm that the  
17 disclosure would entail, and suggest any additional means that could be used to  
18 reduce that risk. In addition, any such motion must be accompanied by a competent  
19 declaration describing the parties' efforts to resolve the matter by agreement (*i.e.*, the  
20 extent and the content of the meet and confer discussions) and setting forth the  
21 reasons advanced by the Designating Party for its refusal to approve the disclosure.

22 In any such proceeding, the Party opposing disclosure to the Expert shall bear  
23 the burden of proving that the risk of harm that the disclosure would entail (under the  
24 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected  
25 Material to its Expert.

26 \_\_\_\_\_  
27 Expert believes can be disclosed without violating any confidentiality agreements,  
28 and the Party seeking to disclose to the Expert shall be available to meet and confer  
with the Designating Party regarding any such engagement.

1 The Party opposing disclosure to the Expert shall use its best efforts to make  
2 any objection under this provision as early as possible to ensure that the other Party  
3 does not lose the ability to file a motion regarding a dispute under this provision. If a  
4 Party objects to an Expert under this provision at such a time that does not leave  
5 enough time under the Court’s schedule for the other Party to file a discovery motion  
6 to resolve the dispute, the parties shall jointly move to shorten time on any such  
7 motion.

8 **VIII. PROSECUTION AND ACQUISITION BAR**

9 Absent written consent from the Producing Party, no information designated  
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be disclosed to  
11 UZBL or any person acting on its behalf before any foreign or domestic agency,  
12 including the United States Patent and Trademark Office (“the Patent Office”),  
13 relating to the subject matter of this action, including without limitation the products  
14 accused of infringement and the patent asserted in this action or any patent or  
15 application claiming priority to or otherwise related to the patent asserted in this  
16 action. In addition, no person acting on UZBL’s behalf who received information  
17 marked “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall  
18 prosecute, or assist in the prosecution of, any patent application relating to the subject  
19 matter of this action, including without limitation the patent asserted in this action and  
20 any patent or application claiming priority to or otherwise related to the patent  
21 asserted in this action and including in connection with a reissue application, *ex parte*  
22 reexamination, *inter partes* reexamination, *inter partes* review, post-grant review,  
23 review under the transitional program for covered business method patents, or  
24 derivation proceedings of a patent asserted in this action or any patent or application  
25 claiming priority to or otherwise related to the patent asserted in this action, anywhere  
26 in the world until two (2) years after final termination of this action, including any  
27 appeals. It does not preclude any person from doing any of the following activities on  
28 behalf of a party challenging the validity of a patent: filing or participating in a

1 reexamination or a *inter partes* or other post-grant review, or from otherwise  
2 participating in any other proceeding challenging the validity of a patent. For  
3 purposes of this paragraph, “prosecution” includes directly or indirectly drafting,  
4 amending, advising, or otherwise affecting the scope or maintenance of patent claims  
5 and also includes participating on behalf of a party defending the validity of a patent  
6 in any patent office proceedings that allow for claim scope amendment.<sup>2</sup> This  
7 Prosecution Bar shall begin when the affected individual first receives “HIGHLY  
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information and shall end two (2)  
9 years after final termination of this action.

10         Additionally, any individual acting on behalf of UZBL that reviews and/or  
11 learns, in whole or in part, any technical “CONFIDENTIAL” or “HIGHLY  
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information under this Order  
13 shall not substantively supervise or assist in the acquisition of any patents related to  
14 the subject matter of this action for the purpose of asserting infringement claims  
15 against the Producing Party (or any related entity) on behalf of any client/the  
16 Receiving Party for two (2) years after final termination of this action, including any  
17 appeals.

18 **IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
19 **IN OTHER LITIGATION**

20         If a Party is served with a subpoena or a court order issued in other litigation  
21 that compels disclosure of any information or items designated in this action as  
22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
23 ONLY,” that Party must:

24         (a) promptly notify in writing the Designating Party. Such notification shall  
25 include a copy of the subpoena or court order;

26 \_\_\_\_\_  
27 <sup>2</sup> Prosecution includes, for example, original prosecution, reissue and reexamination  
28 proceedings, *inter partes* review proceedings, covered business method review  
proceedings, and post-grant review proceedings.

1 (b) promptly notify in writing the party who caused the subpoena or order to  
2 issue in the other litigation that some or all of the material covered by the subpoena or  
3 order is subject to this Protective Order. Such notification shall include a copy of this  
4 Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
6 the Designating Party whose Protected Material may be affected.<sup>3</sup>

7 If the Designating Party seeks a protective order within a reasonable period  
8 after receiving the notification in subsection (a) above, the Party served with the  
9 subpoena or court order shall not produce any information designated in this action as  
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
11 ONLY” before a determination by the court from which the subpoena or order issued,  
12 unless the Party has obtained the Designating Party’s permission. The Designating  
13 Party shall bear the burden and expense of seeking protection in that court of its  
14 confidential material – and nothing in these provisions should be construed as  
15 authorizing or encouraging a Receiving Party in this action to disobey a lawful  
16 directive from another court.

17 **X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
18 **PRODUCED IN THIS LITIGATION**

19 The terms of this Order are applicable to information produced by a Non-Party  
20 in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
21 – ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in  
22 connection with this litigation is protected by the remedies and relief provided by this  
23 Order. Nothing in these provisions should be construed as prohibiting a Non-Party  
24 from seeking additional protections.

25  
26 \_\_\_\_\_  
27 <sup>3</sup> The purpose of imposing these duties is to alert the interested parties to the existence  
28 of this Protective Order and to afford the Designating Party in this case an opportunity  
to try to protect its confidentiality interests in the court from which the subpoena or  
order issued.



1 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
3 Protected Material to any person or in any circumstance not authorized under this  
4 Protective Order, the Receiving Party must immediately (a) notify in writing the  
5 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
6 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
7 whom unauthorized disclosures were made of all the terms of this Order, and (d)  
8 request such person or persons to execute the “Acknowledgment and Agreement to  
9 Be Bound” that is attached hereto as Exhibit A.

10 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
11 **PROTECTED MATERIAL**

12 When a Producing Party gives notice to Receiving Parties that certain  
13 inadvertently produced material is subject to a claim of privilege or other protection,  
14 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
15 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
16 may be established in an e-discovery order that provides for production without prior  
17 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
18 parties reach an agreement on the effect of disclosure of a communication or  
19 information covered by the attorney-client privilege or work product protection, the  
20 parties may incorporate their agreement in the stipulated protective order submitted to  
21 the court.

22 **XIII. MISCELLANEOUS**

23 13.1 Right to Further Relief. Nothing in this Protective Order abridges the  
24 right of any person to seek its modification by the court in the future.

25 13.2 Right to Assert Other Objections. By stipulating to the entry of this  
26 Protective Order no Party waives any right it otherwise would have to object to  
27 disclosing or producing any information or item on any ground not addressed in this  
28 Protective Order. Similarly, no Party waives any right to object on any ground to use

1 in evidence of any of the material covered by this Protective Order.

2       13.3 Export Control. Disclosure of Protected Material shall be subject to all  
3 applicable laws and regulations relating to the export of technical data contained in  
4 such Protected Material, including the release of such technical data to foreign  
5 persons or nationals in the United States or elsewhere. The Producing Party shall be  
6 responsible for identifying any such controlled technical data, and the Receiving Party  
7 shall take measures necessary to ensure compliance.

8       13.4 Filing Protected Material. Without written permission from the  
9 Designating Party or a court order secured after appropriate notice to all interested  
10 persons, a Party may not file in the public record in this action any Protected Material.  
11 A Party that seeks to file under seal any Protected Material must comply with Civil  
12 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court  
13 order authorizing the sealing of the specific Protected Material at issue. If a Receiving  
14 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-  
15 5.2.2 is denied by the Court on the merits, then the Receiving Party may file the  
16 Protected Material in the public record unless otherwise instructed by the Court.

17 **XIV. FINAL DISPOSITION**

18       Within 60 days after the final disposition of this action, as defined in Section 4,  
19 each Receiving Party must return all Protected Material to the Producing Party or  
20 destroy such material. As used in this subdivision, "all Protected Material" includes  
21 all copies, abstracts, compilations, summaries, and any other format reproducing or  
22 capturing any of the Protected Material. Whether the Protected Material is returned or  
23 destroyed, the Receiving Party must submit a written certification to the Producing  
24 Party (and, if not the same person or entity, to the Designating Party) by the 60 day  
25 deadline that (1) identifies (by category, where appropriate) all the Protected Material  
26 that was returned or destroyed, and (2) affirms that the Receiving Party has not  
27 retained any copies, abstracts, compilations, summaries or any other format  
28 reproducing or capturing any of the Protected Material. Notwithstanding this

1 provision, Counsel are entitled to retain an archival copy of all pleadings, motion  
2 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
3 deposition and trial exhibits, expert reports, attorney work product, and consultant and  
4 expert work product, even if such materials contain Protected Material. Any such  
5 archival copies that contain or constitute Protected Material remain subject to this  
6 Protective Order as set forth in Section 4 (DURATION).

7 IT IS SO ORDERED.

8  
9 DATED: August 20, 2018

By: *Karen E. Scott*  
Honorable Karen E. Scott  
United States Magistrate Judge

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**Exhibit A**

**Acknowledgement and Agreement to Be Bound**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

UZBL, LLC, a California Limited  
Liability Company,

Plaintiff,

v.

DEVICEWEAR, LLC, a Delaware  
Limited Liability Company; ROBERT  
DODGE, an individual; DOES 1 through  
10, inclusive,

Defendants.

CASE NO.: 8:17-cv-1978-JVS-KES

Hon. James V. Selna

**STIPULATED PROTECTIVE  
ORDER**

The undersigned hereby acknowledges that he/she has read the STIPULATED PROTECTIVE ORDER entered in the above-captioned litigation, and that he/she fully understands and agrees to abide by all the obligations and conditions thereof.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)